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11 Attorneys for Defendants  
12 COSTCO WHOLESALE CORP. and  
13 NBTY, INC.

14 UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA  
16

17 TATIANA KOROLSHTEYN, on behalf  
18 of herself and all others similarly  
19 situated,

20 Plaintiff,

21 v.

22 COSTCO WHOLESALE  
23 CORPORATION and NBTY, INC.,

24 Defendants.  
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CASE NO.: 3:15-CV-00709-CAB-RBB

**DECLARATION OF DR. SUSAN  
MITMESSER IN OPPOSITION TO  
PLAINTIFF TATIANA  
KOROLSHTEYN'S MOTION FOR  
CLASS CERTIFICATION**

Date: TBD

Time: TBD

Judge: Hon. Cathy Ann Bencivengo

Location: Courtroom 4C

**[REDACTED VERSION]**

**DECLARATION OF SUSAN H. MITMESSER**

I, Susan H. Mitmesser, declare:

1. I am currently employed by The Nature's Bounty Co. f/k/a NBTY, Inc. ("NBTY"). My current title is Senior Director of Nutrition and Scientific Affairs. I make this declaration in opposition to Plaintiff's Motion for Class Certification. I make this declaration of my own personal knowledge. If I were called to testify, I could and would testify competently to the matters herein.

2. I graduated from Berea College in 1995 with a degree of nutrition. I graduated from the University of Nebraska with a Master's Degree in 1997. In 1998, I obtained a medical nutrition degree from the University of Nebraska Medical School. Finally, in 2003, I obtained a Ph.D. in nutrition and biochemistry from the University of Nebraska.

3. As the Senior Director of Nutrition and Scientific Affairs, I am familiar with and ultimately responsible for the statements on the labels of the Ginkgo Biloba products manufactured by NBTY, including the Nature's Bounty and Rexall Sundown Ginkgo Biloba products at issue in the *Petkevicius v. NBTY* lawsuit and the trunature Ginkgo Biloba product at issue in the *Korolshteyn v. Costco, et al.* lawsuit (collectively the "Ginkgo Products").

4. NBTY maintains confidential "Structure Function Files," which include information regarding the substantiation of every claim made on our product labels and the functionality of the product's ingredients, including one for the active ingredients in the Ginkgo Products. While the information in these files may be publicly available, the company treats its unique collection of publicly available studies and information as proprietary and confidential

5. During the course of this litigation, we produced that substantiation to Plaintiffs in both lawsuits.

1           6.     For the active ingredient in the Ginkgo Products—Ginkgo Biloba  
 2 extract standardized to contain 24% glycosides and 6% terpenes—the Structure  
 3 Function File assembles scientific articles and reports relevant to the properties and  
 4 benefits of Ginkgo Biloba.

5           7.     Among the studies relied upon by NBTY in support of the claims  
 6 made on the labels of the Ginkgo products are the following eighteen (18) studies  
 7 which have been attached hereto as Exhibits A-R:

8           a.     [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]

11           i.     [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]

21           [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]



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e.

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i. [REDACTED]

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1 ii. [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 I declare under penalty of perjury under the laws of the United States that  
5 the foregoing is true and correct.

6 Executed this 9<sup>th</sup> day of December 2016, at Hillsdale, Michigan.

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Susan H. Mitmesser